

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

DAVID LO,

Plaintiff and Appellant,

v.

JSL PLAZA PUENTE HILLS,
LLC,

Defendant and Respondent.

B294527

(Los Angeles County
Super. Ct. No. 676149)

JSL PLAZA PUENTE HILLS,
LLC,

Cross-complainant and
Respondent,

v.

DAVID LO et al.,

Cross-defendants and
Appellants.

APPEAL from judgment and order of the Superior Court of
Los Angeles County, Samantha P. Jessner, Judge. Dismissed.

Law Office of Ronald G. Kim and Ronald G. Kim for Plaintiff,
Cross-defendant and Appellant David Lo and Cross-defendant and
Appellant Hyo Sue Lo.

Raisin & Kavcioglu, Aren Kavcioglu and Harold Jung
for Defendant, Cross-complainant and Respondent JSL Plaza
Puente Hills, LLC.

Before trial, appellants David Lo and Hyo Sue Lo (the Los) and respondent JSL Puente Hills Plaza LLC (JSL) executed a stipulation waiving their respective rights to an appeal in this action. The Los nevertheless purport to appeal from the judgment in this action, as well as an order denying their motion for a new trial. The Los admit they signed the stipulation, but argue that their attorney misrepresented the significance of what they were signing, and that the waiver therefore does not bind them. For reasons we discuss in more detail below, we disagree and, accordingly, grant JSL's motion to dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

A. Underlying Dispute and Lawsuit

The lawsuit underlying this appeal involves a commercial lease of part of a shopping center owned by JSL. JSL originally leased space in its shopping center to Ying Chi Chen (Chen) on terms set forth in a written lease set to expire on September 30, 2017. At trial, JSL offered into evidence a February 29, 2016 document entitled "assignment and assumption of lease and consent of lessor" (capitalization omitted), which purported to assign Chen's lease to the Los and extend the period of the lease through September 2027. The document appears to be signed and initialed by the Los. The Los paid JSL rent through September

2017, but vacated the premises on October 1, 2017 and made no further rental payments thereafter. Although the term of the lease under the assignment did not end for another 10 years, the Los claimed they never signed the assignment.

David Lo subsequently sued JSL, seeking a declaration that the assignment was void because the Los had never executed the document. JSL filed a cross-complaint against the Los for breach of contract seeking unpaid rent for the remainder of the lease term.

B. Stipulation Regarding Court Reporter and Right to Appeal

On August 15, 2018, the parties executed two stipulations during a pretrial appearance before the court. First, counsel for both parties executed and presented to the court a written stipulation agreeing to proceed without a court reporter and waiving the right to appeal on behalf of their respective clients. The court requested that counsel obtain a written agreement from their clients as well. In response, Jaime Kim, the Los' attorney at the time, prepared a handwritten stipulation bearing the title, at the top of the first page of the two-page document, "[s]tipulation to waive right to appeal." As filed, the document provides as follows: "[The Los and JSL] stipulate [and] waive his/her/their right to appeal the [j]udgment arising in and from this action. [¶] Therefore, all parties stipulate to proceed with trial without [the] presence of a court reporter. [¶] Mr. David Lo and Mrs. Hyo Sue Lo was explained of [sic] this matter [b]y their attorney, Jaime Kim, in the Korean language. [JSL] did not need an interpreter. David Lo and Hyo Sue Lo were also explained of [sic] the stipulation by the court-certified Korean/English interpreter, Ms. Aeryoung Chi Kim." It is undisputed that both parties and their counsel signed this stipulation at the courthouse and presented it to the court.

C. Judgment and Motion for New Trial

Trial commenced later that same day, at the conclusion of which the court found in JSL's favor on all claims and awarded JSL damages and attorney fees. The court rejected the Los' contention that "[JSL] had inserted the 'ten-year' clause into the lease agreement," as there was "substantial evidence to the contrary" and both "[the Los] and their witnesses lacked credibility."

The Los secured new counsel and moved for a new trial on the basis that their trial counsel, Jamie Kim, had engaged in misconduct of various types. Specifically, they argued that (1) when questioning Chen as a witness at trial, Kim failed to follow a script she had rehearsed with Chen, causing Chen, who claimed to have limited spoken English language skills, to become confused; and (2) Kim misrepresented to the court that the Los had waived their right to a court reporter and their right to appeal, when, in fact, the Los had not done so.

The Los supported these arguments with declarations from the Los themselves, as well as declarations from Chen and another of the Los' trial witnesses, Jimmy Chao. Chen and Chao claimed to have witnessed the execution of the August 15, 2018 stipulation at the courthouse. All four declarations set forth—using the same wording—the following version of events: In the courthouse hallway, Jamie Kim had presented a blank sheet of paper to the Los and told them they had to sign it in order to waive their right to a court reporter; Kim did not translate the contents of the stipulation for the Los, did not secure a translation via an interpreter, and did not explain that the document also waived the Los' right to appeal.

At the hearing on the motion, the court stated that "[t]here was a translated and interpreted waiver of appeal. I watched it with my own eyes." The court also questioned the necessity of a

translation in any event, given that the Los had testified in English. The court did not, however, make any express factual finding regarding the circumstances under which the stipulation was executed, nor did it base its order regarding the Los' new trial motion on any assessment of the evidence in this regard. Rather, the court generally noted that the Los, Chao, and Chen all had not been credible witnesses at trial, but denied the motion on the separate basis that the type of attorney conduct described in the Los' motion did not provide grounds for a new trial under Code of Civil Procedure section 657 in any event. The court also noted that the motion was not supported by any evidence suggesting that the Los would have obtained a better result, absent the alleged actions of attorney Kim.

The Los filed a notice of appeal of the judgment, the award of attorney fees contained therein, and the order denying the motion for new trial. JSL filed a motion to dismiss the appeal, based on the parties' August 15, 2018 stipulation and JSL's argument that the Los' appeal is frivolous. We address only the first issue, as we conclude that the parties' stipulation bars the Los' appeal.

DISCUSSION

We need not resolve the parties' factual dispute regarding the circumstances under which the parties executed the stipulation in order to grant JSL's motion to dismiss, because even assuming the Los' proposed version of events is true, it would not void the stipulation.

"It is well-settled that a party may expressly waive its right to appeal subject to only a few conditions:" (1) "The attorney must have the authority to waive a party's right to appeal"; (2) "The waiver must be express and not implied"; and (3) "The waiver must not have been improperly coerced by the trial judge." (*McConnell v.*

Merrill Lynch, Pierce, Fenner & Smith, Inc. (1985) 176 Cal.App.3d 480, 488; see *Shepard-Branom v. Diamond* (2019) 39 Cal.App.5th Supp. 1, 9 [same].)

Here, authority is not in dispute, as the Los admit they themselves signed the document. Nor can there be any dispute that the waiver the stipulation contains is express and explicit: The document provides that the Los and JSL “[s]tipulate [and] waive his/her/their right to appeal the [j]udgment arising in and from this action,” and is also entitled “[s]tipulation to waive right to appeal.”¹ (See *Pratt v. Gurse, Schneider & Co.* (2000) 80 Cal.App.4th 1105, 1112; *id.* at p. 1107 [arbitration agreement stating “ ‘the right to appeal from the arbitrator’s award or any judgment thereby entered or any order made is expressly waived’ ” was sufficiently clear to dismiss appeal from judgment confirming an arbitration award]; cf. *Reisman v. Shahverdian* (1984) 153 Cal.App.3d 1074, 1089; *id.* at pp. 1082–1083 [language in arbitration agreement stating “no appeal or further proceeding” after the award “w[ould] be possible” was insufficiently specific to waive right to appeal order confirming arbitration award].)

As to the third condition, the Los do not suggest (nor does the record support) that the trial judge coerced them to sign the stipulation (nor, for that matter, that JSL did so). All conditions for an enforceable waiver of the right to appeal are thus met, even if we accept the Los’ description of the circumstances under which the stipulation was executed.

¹ Although the stipulation does not separately refer to orders, the only order from which the Los attempt to appeal—the order denying JSL’s motion for a new trial—is not directly appealable and is reviewable only on appeal from the underlying judgment. (See *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 18.)

The Los nevertheless contend that they cannot be bound by the stipulation, because all they signed was a blank piece of paper, which their attorney led them to believe would waive only their right to a court reporter, not an appeal. We are not persuaded.

“ ‘[A] stipulation or consent judgment, being regarded as a contract between the parties, must be construed as any other contract.’ ” (*Lanyi v. Goldblum* (1986) 177 Cal.App.3d 181, 184, fn. 3, quoting *Rappenecker v. Sea-Land Service, Inc.* (1979) 93 Cal.App.3d 256, 263.) “[O]ne who assents to a contract is bound by its provisions and cannot complain of unfamiliarity with the language of the instrument.” (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 710; *Marin Storage & Trucking, Inc. v. Benco Contracting & Engineering, Inc.* (2001) 89 Cal.App.4th 1042, 1049 (*Marin Storage*) [“ordinarily one who signs an instrument which on its face is a contract is deemed to assent to all its terms”].)² “A party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing.” (*Marin Storage, supra*, at p. 1049; *Mission Viejo Emergency Medical Associates v. Beta Healthcare Group* (2011) 197 Cal.App.4th 1146, 1156 [“[f]ailing to read a [contract] (or its table of contents) is not sufficient reason to hold a clear and conspicuous [contract]

² The contractual nature of the stipulation here was not hidden, nor was the waiver of the right to appeal; indeed, both were identified in the title of the document. (Cf. *Marin Storage, supra*, 89 Cal.App.4th at pp. 1049–1050 [“when the writing does not appear to be a contract and the [contractual] terms are not called to the attention of the recipient . . . no contract is formed with respect to the undisclosed term”]; *Metters v. Ralphs Grocery Co.* (2008) 161 Cal.App.4th 696, 702 [plaintiff not bound by arbitration agreement hidden in a form he signed entitled “Notice of Dispute & Request for Resolution” that “did not look like a contract and did not alert [plaintiff] that he was agreeing to binding arbitration”].)

provision unenforceable”].) Even where there is a language barrier, it is the responsibility of a contracting party to understand what she is signing. (*Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 163 [“[i]f [the contracting party] cannot read [English], he should have it read or explained to him”], quoting 1 Witkin, Summary of Cal. Law (9th ed. 1987) § 120, p. 145.)

What attorney Kim may have said to the Los regarding the future contents of the blank document they say they signed does not lessen the applicability of these general rules to the stipulation here. The Los claim they signed a document without first assuring they understood what was written on it—indeed, before anything was written on it at all—because attorney Kim led them to misunderstand what they were signing. But it is only when a party misunderstands the nature of what he signs “*without negligence on his part*” that such a lack of understanding will affect the validity of the resulting document. (*C.I.T. Corp. v. Panac* (1944) 25 Cal.2d 547, 549 (*C.I.T.*), quoting 1 Williston on Contracts (3d ed. 1957) § 95A, italics added.) One who—like the Los claim to have done—“ ‘in the absence of extenuating circumstances, relies without investigation of his own on the representations of the person at whose request he signs is guilty of negligence.’ ” (*C.I.T. Corp.*, *supra*, at pp. 549–550, quoting 1 Williston on Contracts (3d ed. 1957) § 1488.) Thus, even if attorney Kim misrepresented to the Los what she planned to write on the document after they signed, the Los nevertheless freely chose to sign something without first reviewing its contents for themselves, and cannot use that misrepresentation as a basis to avoid the contract their signatures created. (See *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 419–420 [“fraud does not render a written contract *void* where the defrauded party had a reasonable opportunity to discover the real terms of the contract”].)

DISPOSITION

The appeal is dismissed. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

SINANIAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.